

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Reexamination of Roaming Obligations of)	WT Docket No. 05-265
Commercial Mobile Radio Service Providers)	
)	
Automatic and Manual Roaming Obligations)	WT Docket No. 00-193
Pertaining to Commercial Mobile Radio)	
Services)	

To: The Commission

COMMENTS OF NEXTEL PARTNERS, INC.

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TABLE OF CONTENTS

	Page
SUMMARY	ii
I. NEXTEL PARTNERS' SERVICE AREAS AND ITS ROAMING ACTIVITIES	2
II. THE COMMISSION'S CURRENT ROAMING RULES SHOULD NOT BE MODIFIED	4
A. The Commission's Market-Based Approach to Roaming Has Succeeded	5
B. There are Legitimate Reasons Why Different Carriers Value Roaming Agreements Differently	6
III. THE COMMISSION SHOULD CONTINUE TO INCENT CARRIERS TO BUILD OUT THEIR LICENSES.....	8
IV. AN AUTOMATIC ROAMING RULE IS NOT NECESSARY TO PROTECT CONSUMERS	9
V. ANY AUTOMATIC ROAMING REQUIREMENT SHOULD BE LIMITED TO INTERCONNECTED VOICE SERVICES, AND SHOULD ALLOW AGREEMENTS BETWEEN AFFILIATES TO DIFFER FROM AGREEMENTS BETWEEN NON-AFFILIATES	12
A. Automatic Roaming Requirements Should be Limited to Interconnected Voice Services	12
B. Carriers' Roaming Agreements With Affiliates Should Not Be Available to Competitors.....	14
CONCLUSION.....	15

SUMMARY

Nextel Partners recommends that the Commission maintain its current roaming rules and reject proposals to require carriers to enter into automatic roaming agreements. The state of the CMRS market today, more than ever, demonstrates that Commission regulation is unnecessary. Ten years after the Commission declined to impose an automatic roaming requirement, roaming service is available to consumers, and the Commission has not allowed regulatory mandates to override carriers' legitimate business decisions on rates, terms, and conditions.

A market-based approach is especially appropriate because carriers value roaming agreements differently. Nextel Partners and its affiliate Nextel Communications, Inc. provide specialized mobile radio service under the Nextel® brand name with handsets that utilize Motorola's proprietary iDEN technology. With only one other carrier in the nation using this technology, Nextel Partners has made a business decision to provide service to its customer base by building out its own network rather than through roaming agreements with other carriers. For this same reason, Nextel Partners has never been in a position to use automatic roaming agreements to generate intercarrier roaming revenue that would justify the expense of implementing automatic roaming arrangements. The Commission should not second-guess these kinds of business decisions by mandating rates, terms or conditions that a carrier does not find commercially beneficial.

A mandatory automatic roaming requirement would provide carriers with an incentive to use roaming agreements as a substitute for network buildout. This would be contrary to the Commission's policy goal of encouraging multiple carriers to build out areas using their chosen technology, which has led to the vigorous competitive market that we see today. In addition, the imposition of mandatory roaming obligations would likely hurt those carriers that have acquired

wide-ranging licenses and invested in network facilities in order to develop broad footprints. It would be inequitable for the Commission to penalize those carriers that have accomplished the most complete network buildout, in favor of providing a safety net for carriers that have not been aggressive in this regard.

The Commission should find that an automatic roaming requirement is not necessary to protect consumers. Customers in nearly all areas of the nation are able to purchase service plans that provide the ability to roam on other networks. Customers who purchase service plans that do not allow for roaming can obtain wireless voice service when they are off network easily by purchasing pre-paid wireless service plans. Moreover, companies who claim to have difficulty entering into automatic roaming agreements have the ability to increase potential roaming partners through the use of multi-mode handsets, which are increasingly available from manufacturers.

If the Commission were to impose automatic roaming obligations on wireless carriers, the scope of such obligations should be limited to interconnected voice services. This is appropriate because of the complex technical issues associated with data roaming, and serves the Commission's goals of incenting the deployment of broadband technology in all areas of the nation. In addition, if the Commission were to impose automatic roaming obligations it should give carriers the authority to establish roaming arrangements with affiliates different from those available to other carriers. Because affiliates are in business together (instead of in competition), it is appropriate for a carrier to provide roaming service to an affiliate at rates and on terms that are different than what is provided to other carriers.

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COMMENTS OF NEXTEL PARTNERS, INC.

Nextel Partners, Inc. hereby submits its comments on the *Memorandum Opinion & Order and Notice of Proposed Rulemaking* ("NPRM")¹ in the above captioned proceeding. The NPRM seeks comment on whether the Federal Communications Commission ("Commission") should modify its current rules regarding roaming requirements applicable to commercial mobile radio service ("CMRS") providers given the current state of the CMRS market.² In the past eleven years the Commission has on several occasions decided that roaming is best left to market forces rather than Commission regulation. The state of the CMRS market today, more than ever, demonstrates that further Commission regulation is unnecessary and that proposals to impose mandatory automatic roaming obligations should be rejected. The Commission should find that roaming agreements should continue to be based on voluntary negotiations, that market forces

¹ *In the Matter of Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers*, WT Docket No. 05-265, *Memorandum Opinion & Order and Notice of Proposed Rulemaking*, FCC 05-160 (Aug. 31, 2005) ("NPRM").

² NPRM, ¶ 1.

have provided consumers sufficient opportunities to purchase out-of-network wireless services, and that automatic roaming requirements are unnecessary and counterproductive.

I. NEXTEL PARTNERS' SERVICE AREAS AND ITS ROAMING ACTIVITIES

Nextel Partners provides competitive telecommunications services in mid-sized and rural service areas. Nextel Partners was formed as a separate publicly-traded company in 1999 through a cooperative venture with Nextel Communications, Inc. ("Nextel Communications") for the purpose of facilitating and expediting the buildout of wireless service to parts of the United States that are primarily outside of the 100 largest metropolitan statistical areas ("MSAs"). Nextel Partners' primary business focus is to provide digital wireless mobile communication services in mid-sized and smaller markets, including historically underserved and rural markets throughout the United States.

Through its cooperative arrangements with Nextel Communications, Nextel Partners brings to its customers in smaller markets the same national network and the same fully integrated four-in-one bundle of services available from Nextel Communications in urban areas. These services include (i) digital cellular, (ii) text/numeric messaging, (iii) Nextel Wireless Web services and (iv) Nextel Direct Connect digital two-way radio in a single phone. Nextel Partners provides these advanced digital wireless communications services over an industry leading 2.5G nationwide network that utilizes Motorola's iDEN technology. Pursuant to agreements between the companies, both Nextel Partners and Nextel Communications provide their services under the Nextel® brand name, and customers of both companies are provided cost-free roaming nationwide on the Nextel® network.

Since its inception as a startup entity in 1999, Nextel Partners has rapidly deployed an extensive network within its license service territory. During its first five years of operation, Nextel Partners completed the buildout of all of the medium-sized markets and many of the

tertiary and rural areas within its licensed territory, as well as the major highway corridors running between populated areas. At the time of its formation in 1999, Nextel Partners served fewer than 50,000 customers in a small number of markets. Today, Nextel Partners serves over 1.9 million customers in 31 states, operates more than 4,000 cell sites and its system covers more than 54,000,000 POPs.

As noted above, Nextel Partners has an arrangement with its affiliate Nextel Communications whereby subscribers to Nextel® brand service can roam cost-free anywhere on the carriers' combined networks. This has been and remains a distinguishing feature of Nextel® brand service. Because the companies together hold licenses that cover the United States, and because they operate using Motorola's proprietary iDEN technology, the two companies have sought to provide their customers with large coverage areas by building out their own networks rather than entering into roaming agreements. In fact, there is only one other carrier that provides CMRS using SMR licenses and iDEN technology (SouthernLINC), and that carrier operates in only four southern states in which Nextel Communications and Nextel Partners hold licenses and have significant buildout.

This lack of roaming partners has affected Nextel Partners in the market in three ways. First, other mid-tier providers have been able to provide their customers (through the use of roaming agreements) with more complete coverage than Nextel Partners in many rural areas. Nextel Partners has responded to these challenges by rapidly building out its own network and differentiating its service in other ways – including its Direct Connect® walkie-talkie service and industry-leading customer service.

Second, the lack of available roaming partners has meant that Nextel Partners has not been able to use intercarrier roaming agreements as a viable way to increase company revenues.

The cost of implementing and maintaining the capability to serve roamers, and to measure to bill that usage, is high when compared to the revenue that might be generated by one small roaming partner. The Company has responded to this challenge by working harder to generate revenue from its own subscriber base.

Third, Nextel Partners' network is not compatible with most international networks, and competitive pressures have required that Nextel Partners be able to offer subscribers international roaming. The Company has responded to this challenge as well, and now provides international roaming service to consumers who have dual-mode handsets manufactured by Motorola that will operate on Nextel Partners' iDEN network in the United States and roam on GSM networks internationally. With this technology, Nextel Partners was able to enter into international roaming agreements with GSM carriers and keep up with its competitors.

Nextel Partners has faced and solved the special roaming problems that necessarily exist for an SMR provider using iDEN technology. It has done so by focusing on its own subscribers, and has responded to competition by investing in network and technology. As a result, Nextel Partners' customers are satisfied and loyal, and Nextel Partners continues to successfully compete in its markets with carriers that use other more widely deployed wireless technologies.

II. THE COMMISSION'S CURRENT ROAMING RULES SHOULD NOT BE MODIFIED

The Commission has sought comment on the state of roaming in the CMRS marketplace, and whether CMRS providers should continue to be subject to roaming obligations.³ Nextel Partners recommends that the Commission maintain its current roaming rules and reject proposals to require carriers to enter into automatic roaming agreements. In light of the Commission's preference for relying on competitive market forces, and Congress' directive for a

³ *NPRM*, ¶ 20.

pro-competitive, deregulatory telecommunications industry, carriers should continue to enter into roaming agreements on terms that will benefit them commercially, and should not be required to do so absent commercial incentives. If carriers refuse to enter into roaming agreements for anticompetitive reasons, existing remedies are sufficient to address those unusual circumstances.

A. The Commission's Market-Based Approach to Roaming Has Succeeded

Under the Commission's existing Rules and Orders, a wireless carrier is entitled to evaluate the market and consumer demand and determine whether it will benefit commercially by entering into either reciprocal or symmetrical roaming agreements with other carriers. If it decides that roaming agreements will provide it with a competitive advantage (i.e., something it can use to generate subscribers or revenue), it is then free to negotiate the most favorable terms and conditions that it can. No carrier, however, is forced to sign roaming agreements that in the carrier's estimation do not help it better compete for customers and revenues. By relying on the power of competitive market forces, the Commission has ensured that roaming arrangements advance competition and contain efficient rates and terms. This reliance on competitive market forces is consistent with the Commission's longstanding desire to allow "market forces, rather than regulation, to shape the development of wireless technologies."⁴

The Commission's reliance on competitive market forces has been successful. Ten years after the Commission wisely declined to impose automatic roaming obligations on carriers, roaming agreements are regularly negotiated between carriers, and those agreements have given a vast majority of consumers in the nation access to service plans that allow region-wide or

⁴ *Interconnection and Resale Obligations Pertaining to Commercial Mobile Radio Services*, CC Docket No. 94-54, *Second Report and Order Third Notice of Proposed Rulemaking*, 11 FCC Rcd 9462, ¶¶ 26, 37 ("Second Report and Order and Third NPRM").

nationwide roaming.⁵ Where carriers have chosen not to enter into roaming agreements (based on their own business plans), they have not been forced by regulators to make uneconomic and inefficient decisions. Finally, Nextel Partners is unaware of any formal complaint being filed in the last ten years against any wireless carrier alleging unlawful conduct in providing roaming or negotiating roaming arrangements. As the Commission has noted, if a carriers' conduct violates Sections 201 and 202, a complaint could be filed with the Commission under 47 U.S.C. § 208.⁶ There is no evidence that these remedies are insufficient to prevent anticompetitive conduct.

The Commission should find that its market-based approach to carriers' roaming relationships has succeeded, and that it correctly decided not to regulate the rates and terms under which roaming services are provided. Roaming is available to consumers, and the Commission has not allowed regulatory mandates to override carriers' legitimate business decisions on rates, terms and conditions. This demonstrates that the Commission was right to expect that competitive market forces would make roaming service available to end users.

B. There are Legitimate Reasons Why Different Carriers Value Roaming Agreements Differently

The *NPRM* seeks comment on claims made by some small market carriers that they have been unable to negotiate "reasonable" roaming arrangements with some other carriers. As noted

⁵ See, e.g., *In the Matter of Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993 Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Services*, WT Docket No. 05-71, *Tenth Report*, FCC 05-173, ¶ 74 (2005) ("*Tenth Annual CMRS Competition Report*") (discussing availability of national calling plans); *In the Matter of Applications of Western Wireless Corporation and ALLTEL Corporation For Consent to Transfer Control of Licenses and Authorizations*, WT Docket No. 05-50, FCC 05-138, *Memorandum Opinion and Order*, ¶ 4 (2005) (noting that AllTel, through roaming agreements, covers 95% of the population of the United States); *Applications of AT&T Wireless Services, Inc. and Cingular Wireless Corporation*, WT Docket 04-70, FCC 04-255, *Memorandum Opinion and Order*, ¶ 169 (2004) (discussing carriers with whom Cingular has automatic roaming agreements).

⁶ *NPRM*, ¶ 2.

by the Commission, there have been requests that it mandate automatic roaming "at just and reasonable rates."⁷ As is always the case in a competitive market, one size does not fit all, and one carrier's idea of "reasonableness" may not be the same as another's. Nextel Communications and Nextel Partners made a strategic decision to establish a national footprint for Nextel® brand service through network deployment, not via roaming agreements. Having built a business model around this decision, Nextel Partners necessarily views a request from another carrier to enter into an automatic agreement by weighing a number of questions:

- What are the technical challenges and costs associated with implementing a roaming arrangement with an unaffiliated carrier?
- What are the challenges and costs associated with implementing the ability to measure and bill for roaming services provided to another carrier?⁸
- Will its entry into a roaming agreement require it to divert resources away from network buildout that is necessary to keep pace with other competitors?
- Are there network management issues that need to be considered if new roamers are accepted onto the network?
- What value (if any) would there be to allowing Nextel Partners' customers to roam on the requesting carrier's network?
- Will the roaming revenues generated by the proposed per-minute rate make this a profitable venture for Nextel Partners?

As a forward-looking, fiscally-responsible company, Nextel Partners must ask, analyze, and answer all of these questions and others before moving forward. Only Nextel Partners – not the Commission, and not other carriers – can decide whether it is a good business decision to

⁷ *NPRM*, ¶ 10. In addition, the Commission specifically notes that SouthernLINC has taken issue with the fact that it does not have an agreement with Nextel Partners, as well as with the terms that it has negotiated with Nextel Communications. *Id.* ¶ 15.

⁸ The terms under which Nextel Partners and Nextel Communications jointly offer Nextel® brand service provide that they do not bill each other for roaming. As a result, Nextel Partners has never implemented any measurement or billing mechanisms related to roaming.

proceed on the facts presented. A carrier that decides a roaming agreement is not commercially beneficial should be presumed to be making what it believes to be a good business decision for pro-competitive reasons. The Commission should not be undermining carriers' pro-competitive business decisions by deciding for them that roaming agreements should be entered, or by regulating the terms of such agreements.

III. THE COMMISSION SHOULD CONTINUE TO INCENT CARRIERS TO BUILD OUT THEIR LICENSES

The Commission has long been concerned that mandatory roaming requirements would affect carriers' network buildout.⁹ Action that leads carriers to use roaming agreements as a substitute for network buildout is contrary to Commission policy promoting network buildout.¹⁰ As more carriers build out an area, those carriers compete not only for customers, but also to provide roaming service for other carriers' off-network subscribers. Commission policies that have encouraged multiple carriers to build out areas using their chosen technology have led to the vigorous competitive market that we see today.¹¹ Commission action at this time to impose

⁹ See e.g., *In the Matter of Automatic and Manual Roaming Obligations Pertaining to Commercial Mobile Radio Services*, WT Docket No. 00-193, *Notice of Proposed Rulemaking*, ¶ 27 (2000) ("2000 CMRS Roaming NPRM") ("For instance, do such agreements diminish carriers' incentives for building out their networks?"); *NPRM*, ¶ 35 (same).

¹⁰ See *In the Matter of Facilitating the Provision of Spectrum-Based Services to Rural Areas and Promoting Opportunities for Rural Telephone Companies To Provide Spectrum-Based Services*, WT Docket No. 02-381, *Report and Order and Further Notice of Proposed Rule Making*, FCC 04-166, ¶ 4 (2004) ("One of the Commission's primary statutory obligations, as well as one of its principal public policy objectives, is to facilitate the widespread deployment of facilities-based communications services to all Americans, including those doing business in, residing in, or visiting rural areas.").

¹¹ *Tenth Annual CMRS Competition Report*, ¶ 107 ("Theory and evidence suggests that allowing the use of multiple standards may have several pro-competitive advantages over standardization of wireless network technologies.").

mandatory roaming obligations may very well provide disincentives to carriers to build out their own networks, especially in rural areas.

In addition, the imposition of mandatory roaming obligations would likely hurt those carriers that have acquired wide-ranging licenses and invested in network facilities in order to develop broad footprints. These carriers have made investment decisions they believed would position them for success with consumers, and should not be forced to provide these benefits to other carriers that have not taken such action.¹² It would be inequitable for the Commission to penalize those carriers that have accomplished the most complete network build out, in favor of providing a safety net for carriers that have not been aggressive in this regard.

IV. AN AUTOMATIC ROAMING RULE IS NOT NECESSARY TO PROTECT CONSUMERS

The Commission notes that some proponents of an automatic roaming rule suggest that such regulatory action is necessary in order to provide consumers with the ability to make and receive calls when they are off network.¹³ The Commission should find: 1) that customers in nearly all areas are able to purchase service plans that provide the ability to roam on other networks, 2) that customers who purchase service plans that do not allow for roaming can obtain wireless voice service when they are off network easily by purchasing pre-paid wireless service plans, and 3) that companies have the ability to increase potential roaming partners through the use of multi-mode handsets. These facts weigh in favor of a finding that the Commission can continue to rely on competitive markets (rather than government regulation) to ensure that

¹² *Tenth Annual CMRS Competition Report*, ¶ 57 (carriers with large footprints can achieve operational efficiencies).

¹³ *NPRM*, ¶ 10.

consumers have mobile access to the public switched network as they travel outside of their provider's service area.

A vast majority of wireless consumers in the nation have access to plans that allow them to roam on other carriers' networks. As the Commission has noted in its latest competition report, 97% of the nation lives in counties with access to three or more mobile providers, and nationwide roaming plans have become widely available.¹⁴ It is clear, then, that consumers who wish to purchase service plans that provide for automatic roaming can find plans that give them that option. The fact that a very small number of wireless competitors may not be able to provide (or choose not to provide) such an offering does not mean that consumers are being left without appropriate options.

Consumers who choose not to buy service plans that allow for roaming are still able to easily and affordably obtain prepaid wireless services when they are off their provider's network. There are numerous prepaid wireless providers in the market, and these providers offer low-cost phones (as low as \$30-\$50), and the ability to purchase blocks of prepaid minutes at rates of approximately \$0.20 - \$0.25 per minute. A consumer that has purchased a monthly service plan without roaming capability could very easily purchase a prepaid phone to use on those occasions when the customer travels off of its carrier's network. The prepaid per-minute rate will often times be less expensive for the consumer than a provider-imposed roaming charge, and a subscriber can activate a "call-forward" feature on his or her regular phone so as not to miss any incoming calls. The Commission's pro-competition policies have led providers to create options that will allow customers to obtain affordable wireless service as they travel throughout the country even if their regular monthly service does not allow for roaming. The Commission

¹⁴ *Tenth Annual CMRS Competition Report*, ¶¶ 2, 97.

should find that the presence of these options means that it need not take regulatory action to protect consumers by mandating automatic roaming between carriers.

Finally, multi-mode handsets provide carriers with additional options for providing roaming capabilities to customers.¹⁵ While a carrier's technology platform has historically limited its roaming partners, prospective action by the Commission should recognize that the availability of multi-mode phones gives carriers opportunities to look to new roaming partners. The Commission has previously recognized the availability of this technology, and noted that issues related to SMR technology were still outstanding.¹⁶ As explained above, however, driven by competition for international roaming services, Motorola now manufactures dual-mode iDEN phones that operate both SMR and on GSM networks.¹⁷

There is now no technical reason why a carrier could not use such dual-mode phones to create new national roaming partners and generate additional competition, just as carriers have used such phones to establish international roaming partners. As the technology becomes more developed and less expensive, these opportunities will increase. The Commission should recognize that competition has worked to increase the market for roaming services, and should rely on the availability of multi-mode handsets as another reason why carriers have sufficient opportunity to negotiate voluntary roaming agreements.

¹⁵ *NPRM*, ¶ 47 (noting that options increase with multi-mode phones).

¹⁶ *2000 CMRS Roaming NPRM*, ¶ 12.

¹⁷ Information regarding the Motorola i30 can be viewed through www.idenphones.motorola.com/idenproducts.

V. **ANY AUTOMATIC ROAMING REQUIREMENT SHOULD BE LIMITED TO INTERCONNECTED VOICE SERVICES, AND SHOULD ALLOW AGREEMENTS BETWEEN AFFILIATES TO DIFFER FROM AGREEMENTS BETWEEN NON-AFFILIATES**

A. **Automatic Roaming Requirements Should be Limited to Interconnected Voice Services**

If the Commission were to impose automatic roaming obligations on wireless carriers, the scope of such obligations should be limited to interconnected voice services. Extending an automatic roaming rule to Nextel Partners' Direct Connect service (which is not an interconnected voice service) would unfairly require Nextel Partners to provide to others a service it has developed in order to differentiate itself from its competitors. Nextel Partners' ability to provide a fast, high-quality, walkie-talkie functionality has been a focus of the Company's business plans, a driving force behind the marketing of its product, and a large part of its success with consumers. The Commission has long asked carriers to make creative use of spectrum, and to seek to differentiate themselves from the competition. It would be bad policy for the Commission to require such differentiation to be made available to all, thereby penalizing the innovator and stifling future innovation.

An automatic roaming obligation should not be extended to data services due to the significant technical issues associated with roaming among data networks. Unlike interconnected voice, there are no industry standard protocols for identifying a user across networks. As a result, accomplishing roaming for data will, in almost all cases, require the roamed-on party to modify its own system in some way. In addition, Internet Protocol (ip) numbering conflicts generally exist between carriers due to the large number of addressable devices such as subscriber devices and network elements. The Commission has always protected

carriers from forced network modifications.¹⁸ It would be a significant and unwise change in policy for the Commission to now require data roaming that would necessarily require network modifications.

Finally, the Commission has previously recognized the risk that allowing carriers to use other carriers' networks might inhibit network buildout.¹⁹ This is especially significant as carriers continue to implement more robust, state-of-the-art next generation technology. It is important for competition that carriers continue to deploy competing technologies as they upgrade their networks.²⁰ There will be significant harm caused if carriers are given the option to receive a windfall (or a perceived windfall) by choosing to deliver next generation wireless service using roaming agreements rather than network deployment. Given the difficulty of setting a regulated rate that provides appropriate market incentives, there is too great a risk that mandated roaming for data will compromise the Commission's stated goal of ensuring broad deployment of broadband technologies.²¹

For these reasons, any automatic roaming requirement should be limited in scope to interconnected voice services.

¹⁸ See *Second Report and Order and Third Notice of Proposed Rulemaking*, ¶ 29 ("[W]e emphasize that we are not considering requiring carriers to upgrade their networks or implement any technology solely to enable roamers . . . to complete calls on their systems."); *Interconnection and Resale Obligations Pertaining to Commercial Mobile Radio Services*, CC Docket No. 94-54, *Third Report and Order and Memorandum Opinion and Order on Reconsideration*, FCC 00-251, ¶ 21 (2000) ("*Manual Roaming Order on Reconsideration*") (manual roaming rule does not require licenses to modify their systems).

¹⁹ See *supra*, fn. 9.

²⁰ *Tenth Annual CMRS Competition Report*, ¶ 3.

²¹ See, e.g., *In the Matter of Service Rules for Advanced Wireless Services In the 1.7 GHz and 2.1 GHz Bands*, WT Docket No. 02-353, *Order on Reconsideration*, FCC 05-149, ¶ 3 (2005).

B. Carriers' Roaming Agreements With Affiliates Should Not Be Available to Competitors

If the Commission were to impose automatic roaming obligations it should specifically give carriers the authority to establish roaming arrangements with affiliates different from those available to other carriers.²² In this regard, the Commission should find that it is appropriate for a carrier to offer roaming service to an affiliate at rates and on terms that are different than what is offered to other carriers.

Nextel Partners understands that most large and mid-sized wireless carriers in the nation provide service through two or more operating companies that are affiliates under the Act. While the operating entities are technically separate companies, they are generally operated as a single business venture. In Nextel Partners' case, it operates through Nextel Partners of Upstate New York, Inc. in two states, and NPCR, Inc. in the rest of its territory. In these instances, the affiliates are in business together, do not compete against each other, are part of joint marketing and sales activities, and are providing service under the same consumer brand name. It is appropriate for these kinds of affiliates to make business arrangements with each other that would not be extended to carriers with whom they are in competition.²³ It makes no sense for the Commission to hinder affiliates' ability to work together to provide the most value to consumers by making affiliate business arrangements available to competitors.

The same logic would apply to the business arrangement between Nextel Partners and Nextel Communications, which are affiliates under the Act. Nextel Partners and Nextel Communications have operated under a business arrangement whereby each is the exclusive

²² See *NPRM*, ¶ 36 (seeking comment on affiliate agreements).

²³ In fact, these kinds of joint agreements, if made by competitors, would raise significant antitrust issues. See, e.g., *Valley Drug Co. v. Geneva Pharmaceuticals, Inc.*, 344 F.3d 1294, 1304 (11th Cir. 2003).

provider of Nextel® service in its licensed area, they both add to the good will of the Nextel® brand name, they both offer the same service plans at the same rates. An integral part of Nextel® brand service is no-charge roaming on the two carriers' networks. If another, non-affiliated carrier is given the right to force Nextel Partners to enter into a roaming agreement, that carrier will be doing so in order to compete directly with Nextel® brand service. The competing carrier should not be able to demand roaming rates or terms in place between Nextel Partners and Nextel Communications.

For these reasons, the Commission should allow affiliates to do business together on terms not provided to competitors.

CONCLUSION

Nextel Partners respectfully requests that the Commission take action consistent with the views expressed herein.

Respectfully submitted,

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